

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ALLIED PROPERTY AND  
CASUALTY INSURANCE  
COMPANY, a foreign corporation,  
individually and as subrogee for its  
insured Joseph M. Holohan,

2:09-CV-626 JCM (PAL)

Plaintiff,

V.

BEAZER HOMES HOLDINGS CORP.,  
et al.,

## Defendants.

## ORDER

Presently before the court is defendant Beazer Homes Holdings Corp.'s ("Beazer") emergency motion to dismiss for failure to comply with pretrial procedure. (Doc. #120).

This case is set for calendar call on Wednesday June 13, 2012, and is scheduled to go to trial on Monday June 18, 2012. (Doc. #117). Beazer did not file the instant motions until Friday June 8, 2012. (Doc. #120).

The motion to dismiss argues that the court should dismiss the instant matter due to plaintiff Allied Property and Casualty Insurance Company’s (“Allied”) alleged failure to comply with pretrial procedure. Specifically, Beazer asserts that Allied has failed to file its pre-trial witness and exhibit disclosures 30 days before trial, pursuant to Federal Rule of Civil Procedure 26(a)(3)(B). (Doc. #120).

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1 Pursuant to Federal Rule of Civil Procedure 26(a)(3)(A), parties must disclose the names of  
2 witnesses, a designation of witnesses whose testimony the party expects to present by deposition,  
3 and an identification of each document or other exhibit the party intends to offer at trial. "Unless  
4 the court orders otherwise," these disclosures must be made at least 30 days before trial. FED. R.  
5 CIV. P. 26(a)(3)(B).

6 On June 5, 2012, the court issued its order regarding trial. (Doc. #117). This order states that  
7 "[a]t calendar call counsel shall supply [the court] with the original and one copy of a complete  
8 exhibit list of all exhibits that are intended to be used during the trial. At the same time, counsel  
9 shall serve upon opposing counsel a copy of the same." (Doc. #117). The order regarding trial  
10 further states that "[a]t calendar call, counsel . . . , shall file with [the court] a list of witnesses  
11 expected to be called on behalf of each party . . ." (Doc. #117).

12 Here, Allied has not failed to comply with pretrial procedure because the court ordered Allied  
13 to bring its witness list and exhibit disclosures to calendar call. (Doc. #117). Thus, Allied was not  
14 required to file its witness list and exhibit disclosures 30 days before trial. *See* FED. R. CIV. P.  
15 26(a)(3)(B). Therefore, dismissal on this grounds is not appropriate.

16 Accordingly,

17 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Beazer Homes  
18 Holdings Corp.'s motion to dismiss for failure to comply with pretrial procedure (doc. #120) be, and  
19 the same hereby is, DENIED.

20 DATED June 12, 2012.

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22 **UNITED STATES DISTRICT JUDGE**  
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